

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TERESA SANDOVAL

Claimant

VS.

IBP, INC.

Respondent

Self-Insured

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Docket No. 228,434

ORDER

Respondent appeals from a preliminary hearing order entered by Administrative Law Judge Kenneth S. Johnson on December 16, 1997.

ISSUES

The Administrative Law Judge ordered respondent to provide claimant with medical treatment. Respondent contends the Administrative Law Judge exceeded his jurisdiction in doing so because the evidence does not establish an accidental injury arising out of and in the course of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the order granting medical benefits should be affirmed.

The Appeals Board has jurisdiction to review this preliminary hearing order under the provisions of K.S.A. 1997 Supp. 44-551 and K.S.A. 1997 Supp. 44-534a.

This case was presented to the Administrative Law Judge for determination on the basis of medical records from treating physicians. Claimant did not testify. The records show that claimant worked as a meat trimmer and began experiencing pain, tingling, and burning sensation in her right hand and forearm at work in late January and early February 1997. Claimant was initially treated by Myron J. Zeller, M.D. It was Dr. Zeller's initial impression that claimant had a strain of her right hand, wrist, and forearm. He tested to rule out carpal tunnel syndrome. When the nerve conduction studies were not helpful

and conservative treatment provided no significant relief, Dr. Zeller referred claimant to Bernard F. Hearon, M.D., for additional evaluation.

Dr. Hearon's initial impression was that claimant "has generalized ligamentous laxity and probable work related right upper extremity overuse syndrome." Dr. Hearon also recommended claimant be released to full duty.

As recommended by Dr. Hearon, Dr. Zeller released claimant to return to full duty on March 21, 1997. On April 18, 1997, claimant returned to Dr. Zeller with additional complaints and reported increased pain in her right wrist. The only work she was doing at the time was using a pencil to mark down information.

Dr. Zeller asked for additional evaluation by John H. Gilbert, M.D. Dr. Gilbert's initial impression was synovitis in the right arm. But he recommended rheumatologic studies. After the tests, Dr. Gilbert diagnosed inflammatory polyarthralgia. He also recommended additional evaluation by a rheumatologist. In answer to the specific questions posed by respondent, Dr. Gilbert indicated that the condition was not "a temporary aggravation" of a preexisting condition. He also indicated he could not state to a reasonable degree of medical certainty that the condition was caused by her work at IBP.

The medical records are open to several possible interpretations. It is possible, as respondent suggests, that the most recent opinion written by Dr. Gilbert represents the most authoritative conclusion. It is based upon additional testing and takes into consideration and possibly overrides the earlier diagnosis. On the other hand, it is difficult to determine precisely what Dr. Gilbert intends. The initial rheumatologic testing appears to have been negative. Nevertheless, he has recommended additional testing. The diagnosis of inflammatory polyarthralgia does not, in the Board's view, rule out the possibility that the diagnosis is work related. Dr. Gilbert states his opinion that the condition is not a temporary aggravation of a preexisting condition. He does not rule out the possibility of a permanent aggravation of a preexisting condition. At this point he also states he cannot give an opinion to a reasonable degree of medical certainty that the condition is work related. Again, this opinion does not rule out the possibility that it is work related. Finally, there remains the possibility that claimant suffers from more than one condition, part work related and part nonwork related.

Viewed as a whole, the Appeals Board concludes that the evidence indicates the claimant probably suffers from a condition which is at least in part aggravated by claimant's work activities. The initial treating physician and Dr. Hearon, in particular, appear to have considered the condition work related. Claimant associates the symptoms with her work. Later testing may establish that claimant suffers from an arthritic condition unrelated to her work. However, at this point in the proceedings, it appears more probably true that claimant suffers from a condition which is aggravated or caused by her work activities.

WHEREFORE, the Appeals Board finds that the order by Administrative Law Judge Kenneth S. Johnson, dated December 16, 1997, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

c: Mark E. McFarland, Garden City, KS
Craig A. Posson, Dakota City, NE
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director